

### **REMARKS/ARGUMENTS**

Reconsideration and allowance of the present application based on the following remarks are respectfully requested.

Preliminarily, Applicants wish to thank the Examiner for acknowledging the allowability of claims 10, 16 and 17, if rewritten in proper form. Applicants respectfully submit that all remaining claims are allowable as well.

Upon entry of this Amendment, claims 1-34 will be pending with claims 20 and 26-28 being withdrawn by the Examiner. No new matter has been introduced.

The drawings stand objected to under 37 CFR 1.83(a). The Applicants submit that the above amendments place the drawings in full compliance with 37 CFR 1.83(a). The Applicants reserve the right to reenter the species deleted from claim 19, along with appropriate drawings at a later stage in prosecution.

The specification stands objected in view of the data reported in Table 1 on page 25. The Examiner's attention is drawn to page 24, lines 4-5. Withdrawal of this objection is respectfully requested.

Claim 6 stands objected to under 37 CFR 1.75(c) as being in improper dependent form. The Applicants submit that claim 6 properly limits the scope of claim 5 by selecting one of the species recited in claim 5. However, to avoid delays in prosecution, the Applicants have made claim 6 depend from claim 1. The Applicants therefore request reconsideration and withdrawal of this rejection.

Claims 1, 10, 19, 25, and 30 were objected to for various informalities. The Applicants submit that the above amendments fully address these objections. Accordingly, withdrawal of these objections is respectfully requested.

Claims 1, 10, 25, 29, and 30 stand rejected under 35 U.S.C. §112, second paragraph for being indefinite. With respect to claim 10, the Applicants submit that the above amendments remedy the lack of antecedent basis. With respect to claims 1, 25, 29 and 30, however, the Applicants traverse this rejection for at least the following reasons.

Citing *Ex parte Wu*<sup>1</sup> for the proposition that claims reciting "broad language ... followed by 'such as' and then narrow language" are indefinite, the Examiner apparently concludes that recitation of "optional" elements would result in similar indefinite claims.

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<sup>1</sup> 10 USPQ.2d 2031, 2033 (Bd. Pat. App. & Inter. 1989)

Such an argument ignores the relevant passage of *Wu*, in which the Board **reversed** the Examiner for rejecting the claims under §112, second paragraph because they recited the term “optionally”:

In rejecting a claim under the second paragraph of 35 USC 112, ***it is incumbent on the examiner to establish that one of ordinary skill in the pertinent art, when reading the claims in light of the supporting specification, would not have been able to ascertain with a reasonable degree of precision and particularity the particular area set out and circumscribed by the claims...*** The examiner bases his request on the prior decisions, wherein the term “such as” was found to render the claims indefinite. We do ***not consider the term “optionally” to always result in the same degree of variability or indefiniteness as might result from the use of the phrase “such as”***... Claims often include the accepted expressions “up to”, “O to . . . %”, “not more than”, which are recognized to indicate the possible, but not required, presence of a component. The use of the term “optional” in the present circumstances is more analogous to the noted accepted expressions than it is to the use of the phrase “such as” in the cases relied on by the examiner.<sup>2</sup>

Therefore, the use of the term “optionally”, does not render the present claims indefinite.<sup>3</sup> Furthermore, the Examiner has failed to establish that one of ordinary skill in the art would not have been able to ascertain with a reasonable degree of precision and particularity the particular area set out by the present claims. Accordingly, the Applicants respectfully request reconsideration and withdrawal of this rejection.

Claims 1-4, 11, 12, 14, 15, 18, 19, 21, 22, 25, 29 and 30-34 stand rejected under 35 U.S.C. §102(b) as unpatentable over Lindqvist (US 5,385,098). Additionally, claims 7-9, 23, and 24 are rejected under 35 U.S.C. §103(a) as obvious over Lindqvist; claims 5 and 6 as obvious over Lindqvist in view of Dinegar, and claim 13 as obvious over Lindqvist in view of Wang. The Applicants traverse these rejections for at least the following reasons.

Without any discussion as to how Lindqvist anticipates the invention (by providing such a high burn-rate pressurizing initiator in the interstitial spaces of the large particle size, porous, powdered explosive) the Examiner merely refers to “figure 2 and column 4 lines 67-

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<sup>2</sup> *Wu* at 2032-33. (internal citations omitted, emphasis supplied).

<sup>3</sup> See also MPEP §2173.05(h)

68, column 5 line 1, column 6 lines 5-9, lines 16-35 , lines 45-51 and lines 62-64, column 7 lines 1-3, lines 6-13, and lines 28-43, column 8 lines 26-39 and lines 66-68, and column 9 lines 1-5 and lines 41-50” as providing sufficient proof of anticipation. However, none of these or any other portion of the Lindqvist patent discuss a high burn-rate pressurizing initiator within said interstitial spaces of the powdered explosive.

Indeed, Lindqvist discusses other techniques for combining the “catalyst” and secondary explosive such as:

treating explosive crystals with *catalyst solution or suspension* but ... preferably made by dry-mixing the components, *both suitable fine-grained* as will be described for granulated material...<sup>4</sup>

Nowhere does Lindqvist describe or suggest a high burn-rate pressurizing initiator within interstitial spaces of a powdered explosive. This flaw is not remedied by either Dinegar or Wang. Accordingly, the Applicants respectfully request reconsideration and withdrawal of this rejection.

Applicants submit herewith a Supplemental Information Disclosure Statement which includes the references cited in the specification. It is respectfully noted that U.S. 4,156,390 to Ferguson et al. was cited in an Information Disclosure Statement filed concurrently with the application on May 1, 2001.

Therefore, all objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition for allowance and a Notice to that effect is earnestly solicited.

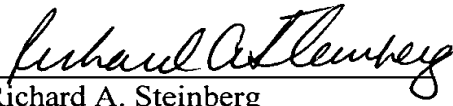
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<sup>4</sup> US 5,385,098 at Column 6, lines 16-20. (*emphasis supplied*)

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicants at the telephone number indicated below in order to expeditiously resolve any remaining issues.

Respectfully submitted,

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Attachment: Information Disclosure Statement